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SUBJECT: SEEKING ORAL STATEMENTS FOR ICJ ADVISORY OPINION
ON KOSOVO'S DECLARATION OF INDEPENDENCE

REF: STATE 29385

¶1. (SBU) This is an action request for action addressee posts
that have recognized Kosovo. See paragraph 2.

ACTION REQUEST AND OBJECTIVES

¶2. (SBU) Embassies are requested to urge host governments to
formally register with the International Court of Justice
(ICJ) before September 15 their intent to present an oral
statement before the ICJ in the Kosovo advisory opinion case.

Any state may do so, whether or not it filed a written
statement in this matter. Oral hearings are scheduled to
begin December 1. Where possible, posts should seek to
deliver a joint or coordinated demarche with French, German,
and British, as well as Kosovo, counterparts. The approach
should target political decision-makers and, as appropriate,
host government legal personnel. If posts believe an approach
would be counterproductive, please inform the Department.

REPORTING DEADLINE

¶3. (SBU) Posts should report results to EUR/SCE, L/EUR, and

L/UNA no later than September 10.

BACKGROUND

¶4. (SBU) The ICJ has invited all UN Member States and Kosovo to present oral statements and comments before the court in December on the question of the &Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo.⁸ Participation is not/not restricted to those states that filed briefs in April or July.

The deadline for registering intent to present an oral statement is Sept. 15.

¶5. (SBU) Last fall, the UNGA adopted a Serbian-sponsored resolution seeking an advisory opinion from the ICJ on the legality of Kosovo's declaration of independence. The first round of briefs was due on April 17, with 22 countries (including the United States) presenting briefs in support of Kosovo's independence and 15 in support of Serbia's position. Ten countries presented additional briefs in the second round of briefs on July 17. The United States and Kosovo, along with eight other countries, filed in support of Kosovo's independence, while five countries (not including Russia) filed in support of Serbia's position. The United States plans to participate in oral hearings which begin December 1. Our goal is to encourage as many supporters as possible to present arguments in support of Kosovo, if possible in coordination with Kosovo and with the United States and other Kosovo supporters. To date, 62 countries have recognized Kosovo and more than 50 others which have not yet recognized joined in voting to accept Kosovo for membership in the IMF and/or World Bank, both of which Kosovo officially joined on 29 June 2009.

¶6. (SBU) Posts may draw on the following points as appropriate.

Process for oral arguments

-- Reiterate appreciation for host government's recognition of Kosovo or vote for Kosovo membership in IFIs and its support for Kosovo's growth as an independent, democratic state.

-- Encourage the host government to participate in the ICJ's oral hearings starting in December and deliver an oral statement supporting Kosovo.

-- Note that the United States also plans to participate in oral hearings at the end of this year.

-- Note that the Court has invited all UN member states and Kosovo to attend the oral hearings and that participation is not limited to those states that presented briefs in April or July. States wishing to participate in the oral hearings must inform the Registry of the Court by September 15 of their intent to do so.

-- Offer to coordinate with host government on the approach to oral presentation and to field any questions the host government might have.

Progress in Kosovo

-- Kosovo's success remains a high priority for the United States and the U.S. administration, and we highly value the host government's continuing partnership and support in this effort.

-- Kosovo has made great strides in its first year and a half of independence, living up to international community expectations and fully deserving of host government's support.

-- By this point, it is clear that Kosovo's independence is

irreversible.

-- It is important that other states demonstrate to the Court that they accept Kosovo as a member of the international community.

-- Participation in the oral hearings will represent continuity with the host government's acceptance of Kosovo as a member of the international community and is an important opportunity to make its voice heard on an important international legal issue and provide valuable insights and perspective to the Court.

-- Presentations need not be long and may be based on, for example, what was said by the host government at the time of recognition or in written statements already submitted to the Court. Our legal team is happy to coordinate with you or answer any questions you may have on specifics. But in general, it would be entirely appropriate to focus on a single legal or political issue, e.g., stating its acceptance and encouraging the Court to advise only on the narrow question presented to it, rather than, for example, to discuss broader questions of self-determination or recognition of states. A key theme is to stress the progress and stability in the region that have followed Kosovo's independence.

¶7. (SBU) Additional points for host governments that filed briefs in April or July:

-- Thank you for your brief(s) in support of Kosovo's independence and continued support for Kosovo.

-- Presenting an oral statement in December would offer an opportunity to reiterate points from your briefs and respond to statements made by other member states, as well as to underscore your continuing political commitment to Kosovo's independence.

¶8. (SBU) Additional points for Croatia and Slovenia:

- As a former constituent republic of Yugoslavia, your government can provide critical perspective for the Court on Kosovo's status within the former Yugoslavia; the events of the 1990s; and the importance of Kosovo's independence to continued regional stability today.

- We expect that each presenter will have a limited period of time -- perhaps as little as 30 minutes -- and we would be happy to coordinate in preparing for the oral presentations if you would find that useful.

¶9. (SBU) Additional point for Finland:

- You may want to respond formally to Serbia's brief, which inappropriately targeted President Martti Ahtisaari, declaring him fundamentally biased during status talks.

- You may also want to include comments on the strengths of the Ahtisaari plan.

¶10. (SBU) Additional points, if host government responds affirmatively to our request to present an oral statement and wishes at this stage to engage on matters of substance:

-- Our legal team would be happy to coordinate with you in advance of the oral hearings as you prepare more concretely.

-- The question as posed to the Court was whether Kosovo's declaration of independence is in accordance with international law.

-- Given the sensitivity of this issue, we believe the Court should address the question as narrowly as it was posed. For instance, it does not question whether Kosovo is now a "state" or whether it was permissible for other countries to recognize Kosovo. We think it is important for states to

indicate to the Court that they consider the question narrow, and do not seek broader statements on issues not directly related to the narrow question.

-- The U.S. believes that recognition of Kosovo by other states is both lawful and appropriate, and considers that, as a practical matter, Kosovo's independence has now been established and is irreversible. Within the UN system, questions related to independence and statehood are left in the hands of member states. The United States respects the ICJ and values its advice, but the decision to recognize a new state is a political decision which it is the prerogative of every sovereign state to make.

-- Kosovo cannot be seen as a precedent for any other situation in the world today. The unique and unusual combination of factors found in the Kosovo situation - including the extended period of UN administration during which Serbia was excluded from any role in governing Kosovo, and the creation of a special process to determine Kosovo's final status - are not found elsewhere and therefore make Kosovo a special case.

-- UNSCR 1244 itself made clear that the legal situation in Kosovo was significantly different than other situations. It was adopted on the premise that Kosovo needed to be dealt with as a special case. Indeed, the international community had approached the overall breakup of the former Yugoslavia itself as a unique situation, of which Kosovo was the final chapter.

POINTS OF CONTACT

¶11. (SBU) For further information on Kosovo, see IntraNet website
<https://infocentral.state.gov/regions/europe--eurasia/kosovo>.
For further information or arguments in favor of U.S. objectives, please contact Kosovo Desk Officers Marianne Toussaint (202-647-9173, or toussaintms@state.gov), or Paul Pfeuffer (202-647-2452 or pfeufferp@state.gov)

¶12. Minimize Considered.
CLINTON